view of the matter. It discusses the rights and history of the game from its origin in 1839, and following the decision of the Missouri Supreme Court in Ex parte Neet, 157 Mo. 527, 57 S. W. 1025, 80 Am. St. Rep. 638, says that it is a game of a character entirely distinct from those specifically enumerated in the statute, and, being one which is urged upon the youth of the land as tending to increase health and physical development, the ban of the law should not be placed upon it unless it be shown that the Legislature specially so intended; and as the statute is penal in nature, requiring a strict construction, it is held not to prevent Sunday baseball.

Seizure of Intoxicating Liquors in Hands of Express Company.—In the case of the American Express Co. *v.* Mullins, 29 Supreme Court Reporter, 381, it appeared that Mullins had delivered certain liquor to the express company in the state of Kentucky for transportation to and delivery in Kansas in violation of the laws of the latter state. On arrival of the goods at destination, they were seized by a sheriff under a warrant issued by a District Court in Kansas, and notice given to show cause why they should not be forfeited and destroyed. The express company notified the shipper of the proceedings taken, and he promised to defend, but apparently did not do so, and the Kansas authorities destroyed the liquor. The present action was then instituted against the express company to recover for the loss of the goods, on the theory that it was its duty to defend the search and seizure proceedings, and that they were without warrant of law and void. The United States Supreme Court held that the shipper having received notice of the proceedings and having promised to defend, the express company was thereby relieved from this duty. As against the contention that the Kansas judgment was wrong and in conflict with a prior decision of the Supreme Court of the United States, it was held to be conclusive and unimpeachable on the theory of being based upon a mistake of law.

Cancellation of Instruments—Bill—Sufficiency—Mental Incapacity.—As held in Towner *v.* Towner, 64 S. E. 732 (Supreme Court of Appeals of West Virginia, April 20, 1909), a bill to set aside and cancel a deed of trust on the ground of mental incapacity in the grantor to execute it, charging, with reasonable certainty as to time and relation to the event, committal of the plaintiff to an asylum for the insane, and not admitting or in any way disclosing a discharge therefrom or a lucid interval, is sufficient as to the allegation of mental incompetency. It is not essential to the sufficiency of such a bill that it allege fraud or undue influence in procurement of the execution of the deed.

Curtesy—Bar—Divorce from Bed and Board.—It is held in Hartigan *v.* Hartigan, 64 S. E. 726 (Supreme Court of Appeals of West

Virginia, April 20, 1909), that a decree of divorce from bed and board, with perpetual separation, in the terms provided by § 12, c. 64, Code (Code, 1906, § 2927), does not bar the curtesy of the husband, against whom such decree is pronounced, in lands belonging to the wife at the time of the decree; but upon lands thereafter acquired by her it operates like an absolute divorce, thus, as to such property, barring claim to curtesy. Quære, may not the court by virtue of § 11, c. 64, Code (Code, 1906, § 2927), in granting such divorce, bar, by a special order in the decree, the right of curtesy or dower in the existing real estate of the parties, or either of them?

Curtesy—Estates Subject to.—It is held in Depue *v.* Miller, 64 S. E. 740 (Supreme Court of Appeals of West Virginia, Feb. 3, 1909), that a husband has an estate by the curtesy, after the death of his wife, in lands which he had voluntarily settled upon her, if he did not, in express terms or by plain implication, relinquish such right in the instrument of conveyance. As the husband's estate by the curtesy in his wife's real estate is given by the law for reasons of public policy, and not created by contract between the husband and wife, no presumption of intention to preclude it arises from the mere fact of a conveyance from the former to the latter, however it may have been effected.

Railroads—Obstructing Highway—Evidence.—As held in State *v.* Baltimore & O. R. Co., 64 S. E. 735 (Supreme Court of Appeals of West Virginia, April 27, 1909), upon an indictment therefor a railroad company cannot be convicted of the offense of obstructing a public road at a railroad crossing, by a freight train in charge of its servants, when the evidence shows but a single offense, and that such obstruction was in violation of the rules of such company and against its positive instructions to the conductor in charge of such train.

Torts—Actions—Evidence—Weight and Sufficiency—Burden of Proof.—In an action for tort, the plaintiff bearing the burden of proof, a verdict for him cannot be found on evidence which affords mere conjecture that the liability exists, and leaves the minds of jurors in equipoise and reasonable doubt. The evidence must generate an actual rational belief in the existence of the disputed fact, as held in Moore *v.* West Virginia Heat & Light Co., 64 S. E. 721 (Supreme Court of Appeals of West Virginia, April 27, 1909). and where a liability is asserted on the ground of tort, the plaintiff bears the burden of proof of the fact on which the liability rests, and the burden to disprove such fact does not shift to the shoulders of the defendant until plaintiff's evidence shows a state of facts sufficient to establish a rational belief of the existence of such fact.